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SIPDIS

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TREASURY FOR OASIA

SENSITIVE

E.O. 12958: N/A
TAGS: EINV EFIN ETRD ECON PREL VM WTO
SUBJECT: VIETNAM'S NEW COMMON INVESTMENT LAW

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¶1. (SBU) Summary: Vietnam's National Assembly (NA) passed fourteen pieces of legislation during its final 2005 session (October 18-November 29). Of the fourteen, none were as controversial as the Common Investment Law (CIL). Approved only in the final hours of this session, the official CIL is a major improvement over the more controversial draft versions, which had prompted intervention from foreign chambers of commerce, governments and donors when made public in early October. While many of these international lobbying efforts focused on working with the Government of Vietnam's (GVN) interagency drafting team, the most significant changes were negotiated by the NA itself, suggesting that despite their reputation as a mere "rubber stamp" to official policy, the NA can influence GVN decision-making under the right circumstances. End Summary.

¶2. (SBU) Donors and the business community have argued for some time that Vietnam needs a new "Common Investment Law" to bring consensus and clarity to an outdated set of decrees and rules that can make investing in Vietnam a complicated and unpleasant process. After reviewing its bilateral trade commitments, its aspirations for World Trade Organization (WTO) membership, and its GDP growth targets, the GVN agreed and created an interagency drafting team to do so. A few years and sixteen drafts later, the drafting team presented a CIL that seemed to miss the entire point of its creation. This draft bill created a larger and more complicated registration and permit system (presumably to allow officials to regulate and control investment projects better, while offering more opportunities for graft), did not alleviate discrimination between domestic and foreign investors, and maintained or instituted other caps and criteria that ultimately worked against the original goals (attracting investment and integrating with the international economy) for drafting a new CIL.

¶3. (SBU) English language translation problems and the drafting team's reticence kept this sixteenth draft out of investors' hands until early October, and when it did arrive, it was not just a disappointment, but a major problem. The American, European and Australian Chambers of Commerce held numerous meetings with the drafting team. U.S. and other officials met separately with the GVN to urge critical changes. The Prime Minister's Research Council, in response to pressure from local economic experts, also weighed in. Technical advisors, individual businesses (both domestic and foreign) and multilateral institutions further pressed the importance of a better draft. When the Ministry of Planning and Investment (MPI), which led the drafting team, finally passed a revised version of the CIL to the NA on November 23, some of the needed changes had been adopted, but not all. As MPI had coordinated their final submission with the Vietnamese Community Party's Politburo and the NA Standing Committee, however, last minute progress appeared doubtful.

¶4. (SBU) Rather than give up, the three Chambers of Commerce, most prominent among them the American Chamber of Commerce, shifted their attention to lobbying the NA. In response to this pressure, MPI Vice Minister Nguyen Bich Dat held a series of meetings in the final hours before the NA session closed, to which he invited representatives of the three Chambers of Commerce, Vietnamese business leaders, GVN officials and senior NA members with prominent business experience. After intense discussions with all participants, almost all of the remaining changes proposed by organizations and persons outside of MPI and the drafting team were incorporated into the official version of the CIL. Local economic experts note that the American Chamber of Commerce's efforts were absolutely critical to this success, forging a new and promising level of trust between the GVN and the international investment community.

¶5. (SBU) Despite these teething difficulties, this new, improved CIL is substantively a step forward for Vietnam. It includes the elimination of TRIMS, export performance

requirements and dual pricing, local content and technology transfer, capital contribution requirements, consensus voting and other restrictions on governance. It clarifies the scope of registration for foreign-invested projects, provides access to foreign arbitration and courts (foreign companies can choose during a dispute between Vietnamese courts or international arbitration), and allows for non-binding sectoral planning. The law also provides significant guarantees and incentives to foreign investors, including non-interference, equal treatment between foreign and domestic investors (especially important for access to credit), security and free transfer of property and capital, and basic intellectual property rights protection.

¶6. (SBU) Most importantly, the final CIL creates a reasonable, though not ideal, registration system for both domestic and foreign invested projects. While foreign investment projects worth more than USD 20 million must be both registered and approved by the GVN, investors must only file notice with the GVN, not wait for approval, for projects valued at less than USD 20 million. While these administrative restrictions are not optimal, they are a real improvement from the existing system and the far more onerous levels the GVN had originally proposed. Domestic investors have similar caps. They do not have to register or file notice for projects under USD 100,000 in value. Domestic investors must file notice for projects between USD 100,000 and USD 20 million in value, and like foreign investors, must receive official approval for projects worth more than USD 20 million.

¶7. (SBU) Asked to characterize the final CIL, one U.S. legal expert in Hanoi stated that it rates an "F" for the new obstacles it creates for domestic investors, but a "B" for what it does for foreign investors. He noted that these ratings could change depending on the implementing regulations, which could further improve the situation for foreign investors and could offset some of the difficulties for domestic investors. Clearly, this CIL is a step backward from the GVN's more liberal attitude towards the domestic private sector a few years ago, an attitude that helped launch Vietnam's private sector on its current expansionary trend. The legal expert observed that this reining in of the domestic private sector could have repercussions for the foreign private sector as well, since the level of domestic private investment will indirectly affect the success of foreign financial services firms as well as firms exporting to Vietnam. In the end, the ultimate test of the success of Vietnam's economic reforms will be the success of the foreign and domestic private sectors, he stressed. On the new system of registration and approval caps, he speculated that only possible explanation for the GVN's insistence on this system was to create new opportunities for graft.

¶8. (SBU) A senior outgoing official at a multilateral organization called the CIL a "big disappointment" compared to the new Common Enterprise Law, at least on the domestic side. He was more positive about what it did for foreign investors. He laid the blame for these shortcomings on the Ministry of Planning and Investment, which he said "needs fixing."

¶9. (SBU) COMMENT: While the GVN may have missed an opportunity to improve its reputation as a place to do business (it is ranked in the bottom quarter of the World Bank's "Doing Business in 2005" report), its willingness to work with foreign investors and the NA in producing a final CIL amenable to all parties involved is quite significant. Though the investment climate in Vietnam has been somewhat improved by the new CIL, the expectations for transparency and consultation have dramatically increased. This is the first time that GVN drafters, foreign and domestic investors, foreign governments, international donors and NA delegates have interacted in the process of making Vietnamese law. That all parties walked away relatively satisfied and still speaking to each other suggests that the Vice Chairman of the Office of the National Assembly (ONA) Nguyen Sy Dzung's recent remark to an Embassy officer that this new kind of interaction "will certainly affect legislative procedures in the future" is true. The real measure of the GVN's attitude towards investors will, of course, be determined by the extent to which the GVN implements the CIL over the next several months. The ultimate measure of the impact this new foray into transparency and cooperation will have on future relations between the GVN and the private sector, and between the GVN and the NA, will take longer to gauge. End Comment.

MARINE